

Under the  
RAILWAY LABOR ACT  
Special Board of Adjustment No. 226  
Hearings April 9-30, 1958  
Dallas, Texas  
Award No. 19



PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM:

ORT Claim 22-27-22, that Telegrapher Cohen D. Smith was improperly and unwarrantedly dismissed from the Carrier's service on October 6, 1957 without sufficient cause; and that Telegrapher Smith shall now be returned to his former position and be paid for all time lost, less amount earned in any other service.

FINDINGS AND OPINION:

Cohen D. Smith was on duty on the third trick at the passenger station, Houston, Texas, when Signal Maintainer I. H. Copeland and Section Foreman appeared at his office about 2:50 a.m. on October 6, 1957. Mr. Copeland entered the office. The Section Foreman remained outside at the ticket window. Copeland informed Smith that he wanted to use the dispatcher's telephone to inform the Dispatcher that he and the Section Foreman had just replaced broken angle bars to the rails a few miles away and had restored the signal system to normal at that point. Copeland had received a call about the signal failure and after finding the trouble took the Section Foreman with him to make the repairs.

Smith refused to allow Copeland to use the telephone. He told Copeland to write out a message to report the matter and that he himself would transmit it. Copeland filed the requested message, addressed to his own superiors but not to the dispatcher. He then requested Smith to report the signal clearance to the Dispatcher in his presence, so that he could have personal knowledge that his duty to report promptly to the Dispatcher had been fulfilled. Smith refused to comply, but said he would report the matter to the Dispatcher later. Copeland told Smith he would go to another telephone at Eureka Yards (Houston) a few miles distance and report to the Dispatcher himself, in view of Smith's unwillingness to comply then and there. This he did, with Smith presumably listening in.

The Superintendent promptly notified Smith of his dismissal from the service at the end of his tour of duty at 7:00 a.m.,

".....for failure to perform his duties in a faithful, intelligent, and courteous manner, and failure to cooperate with other employees in carrying out rules and instructions."

An investigation was requested, and held in Waco on October 25, 1957. Both parties were adequately and properly represented.

The ORT contends that Smith met the situation presented by Copeland in conformity with established rules.

Rule 102 of the Uniform Code of Operating Rules provides that,

"Messages or orders affecting the movement of trains, or conditions of track, bridges or structures must be in writing."

Rule 620 of the Rules and Instructions Governing Station and Train Employees, provides as follows:

"Verbal messages must not be sent when possible to avoid.  
All communications must be in writing."

Copeland testified that he has instructions to report promptly and informally to the Dispatcher when repair work which affects the movement of trains is completed. In addition he is expected to report to his own immediate superiors in writing.

It is the position of the Carrier that Smith should either have permitted Copeland to use the phone to report direct to the Dispatcher or made the report to the Dispatcher himself in the presence and hearing of Copeland, so that Copeland would be satisfied that the information concerning signal and track repairs had been received by the Dispatcher.

At the investigation the Section Foreman, the most disinterested witness, in answer to a question calculated to determine the temper of Smith and Copeland at the time of the incident in Smith's office, replied:

"There were no harsh words by either one, if that is what you mean."

The Special Board finds that it will be in the best interest of all concerned for the Carrier to reinstate Mr. Cohen D. Smith forthwith. He shall not be compensated for time lost between the date of his dismissal, October 6, 1957 and January 20, 1958. He shall be paid for time lost between January 20, 1958, and the date of his reinstatement, less amount earned in any other service, as provided in Rule 8(g). If he earned a vacation in 1956 normally to be enjoyed in 1957, such vacation compensation shall be paid as required by the rules, if not taken. Since the Carrier has abandoned its passenger service at Houston and closed its passenger station there, the three jobs there, including Mr. Smith's, has been abolished. He shall be permitted to exercise his seniority immediately in the same manner he would have been permitted to exercise it if he had still been employed at Houston in good standing at the time the passenger station jobs were abolished.

AWARD:

Claim sustained as per findings and opinion.

/s/ Daniel C. Rogers  
Daniel C. Rogers, Chairman  
Fayette, Missouri

/s/ W. I. Christopher  
W. I. Christopher, Employee Member  
Deputy President, O. R. T.  
3860 Lindell Blvd.  
St. Louis 8, Missouri

/s/ A. F. Winkel  
A. F. Winkel, Carrier Member  
Ass't. General Manager  
Missouri-Kansas-Texas Lines  
Dallas, Texas

Dallas, Texas

August 1, 1958